

United States  
Circuit Court of Appeals

For the Ninth Circuit.

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THEODORE KAPHAN,

Plaintff in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

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Transcript of Record.

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Upon Writ of Error to the Southern Division of the  
United States District Court of the  
Northern District of California,  
First Division.

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CLERK.



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# INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	Page
Affidavit of Service of Affidavit on Motion for New Trial . . . . .	35
Affidavit of Service of Order Allowing Writ of Error . . . . .	56
Affidavit of Service on Assignment of Errors . . .	54
Affidavit of Service on Motion for New Trial . . .	29
Affidavit of Service on Motion in Arrest of Judgment . . . . .	43
Affidavit of Service on Petition for Writ of Error . . . . .	51
Affidavit of Theodore Kaphan on Motion for New Trial . . . . .	31
Arraignment, Plea and Order Overruling De- murrer (No. 6272) . . . . .	17
Arraignment, Plea and Order Overruling De- murrer (No. 6273) . . . . .	18
Assignment of Errors . . . . .	52
Bill of Exceptions . . . . .	57
Certificate of Clerk U. S. District Court to Tran- script on Writ of Error . . . . .	63
Citation on Writ of Error . . . . .	66

Index.	Page
Demurrer to Indictment on Behalf of Theodore Kaphan (No. 6272) .....	11
Demurrer to Indictment on Behalf of Theodore Kaphan (No. 6273) .....	14
Indictment (No. 6272).....	2
Indictment (No. 6273).....	7
Judgment on Verdict of Guilty (No. 6272).....	47
Judgment on Verdict of Guilty (No. 6273)....	48
Minutes of Court—October 27, 1917—Arraignment, Plea and Order Overruling Demurrer (No. 6272).....	17
Minutes of Court—October 27, 1917—Arraignment, Plea and Order Overruling Demurrer (No. 6273) .....	18
Minutes of Court—November 12, 1918—Trial (No. 6272).....	19
Minutes of Court—November 12, 1918—Trial (No. 6273) .....	21
Minutes of Court—November 13, 1918—Trial—Continued (No. 6273).....	24
Minutes of Court—January 6, 1919—Order Submitting Motion for New Trial.....	36
Minutes of Court—January 16, 1919—Order Denying Motion for New Trial (No. 6272)	37
Minutes of Court—January 16, 1919—Order Denying Motion for New Trial (No. 6273)	37
Minutes of Court—February 18, 1919—Order Denying Motion in Arrest of Judgment (No. 6272).....	44
Minutes of Court—February 18, 1919—Order Denying Motion in Arrest of Judgment (No. 6273).....	45

Index.	Page
Motion for New Trial . . . . .	27
Motion in Arrest of Judgment. . . . .	38
Names and Addresses of Attorneys of Record. . .	1
Notice of Presentation of Bill of Exceptions. . .	61
Order Allowing Writ of Error. . . . .	55
Order Denying Motion for New Trial (No. 6272)	37
Order Denying Motion for New Trial (No. 6273)	37
Order Denying Motion in Arrest of Judgment (No. 6272) . . . . .	44
Order Denying Motion in Arrest of Judgment (No. 6273) . . . . .	45
Order Extending Time for Clerk to Complete and Transmit Transcript. . . . .	69
Order Settling etc. Bill of Exceptions. . . . .	62
Order Submitting Motion for New Trial. . . . .	36
Petition for Writ of Error. . . . .	50
Plea (No. 6272) . . . . .	17
Plea (No. 6273) . . . . .	18
Praeceptum for Transcript of Record. . . . .	1
Return to Writ of Error. . . . .	66
Stipulation Re Bill of Exceptions. . . . .	62
Trial (No. 6272) . . . . .	19
Trial (No. 6273) . . . . .	21
Verdict (No. 6272) . . . . .	26
Verdict (No. 6273) . . . . .	27
Writ of Error . . . . .	64





**Names and Addresses of Attorneys of Record.**

For Defendant and Plaintiff in Error (Theodore Kaphan):

HENRY M. OWENS and HARRY K.  
WOLFF, S. F., Calif.

For Plaintiff and Defendant in Error:

UNITED STATES ATTORNEY, San Fran-  
cisco, Calif.

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*In the District Court of the United States, in and for  
the Southern Division of the Northern District  
of California, First Division.*

Nos. 6272-6273.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HARRY A. AKERS, LEE YOW, ROLUB W.  
HENDRICKS, PRESELEY A. McFAR-  
LAND, and THEODORE KAPHAN,

Defendants.

**Praeceptum for Transcript of Record.**

To the Clerk of said Court:

Sir: Please prepare transcript on writ of error and include therein the following papers:

Indictments; demurrers to indictments, and all minute orders pertaining thereto; pleas to indictments; minutes of trial; verdict; all minute orders subsequent to the trial; motion for a new trial; affidavit on motion for new trial; motion in arrest of



**Names and Addresses of Attorneys of Record.**

For Defendant and Plaintiff in Error (Theodore Kaphan):

HENRY M. OWENS and HARRY K.  
WOLFF, S. F., Calif.

For Plaintiff and Defendant in Error:

UNITED STATES ATTORNEY, San Fran-  
cisco, Calif.



*In the District Court of the United States, in and for  
the Southern Division of the Northern District  
of California, First Division.*

Nos. 6272-6273.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HARRY A. AKERS, LEE YOW, ROLUB W.  
HENDRICKS, PRESELEY A. McFAR-  
LAND, and THEODORE KAPHAN,

Defendants.

**Praeceptum for Transcript of Record.**

To the Clerk of said Court:

Sir: Please prepare transcript on writ of error and include therein the following papers:

Indictments; demurrers to indictments, and all minute orders pertaining thereto; pleas to indictments; minutes of trial; verdict; all minute orders subsequent to the trial; motion for a new trial; affidavit on motion for new trial; motion in arrest of

judgment; judgment; petition for writ of error; assignment of errors; order allowing writ of error; bill of exceptions; affidavit of service of affidavit on motion for new trial; affidavit of service on motion for new trial; affidavit of service on the motion in arrest of judgment; affidavit of service on assignment of errors; affidavit of service on petition for writ of error; affidavit of service of order allowing writ of error; all orders extending time to docket record on appeal; original writ of error, and original citation.

Dated this 16th day of October, 1919.

HENRY M. OWENS,  
HARRY K. WOLFF,  
Attorneys for Plaintiff in Error.

[Endorsed]: Filed Oct. 17, 1919. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [1\*]

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*In the Southern Division of the United States District Court for the Northern District of California, First Division.*

**(Indictment—No. 6272.)**

Viol. Sec. 37, C. C. U. S.

At a stated term of said Court begun and holden at the City and County of San Francisco, within and for the Southern Division of the Northern District of California, on the second Monday of July in the year of our Lord one thousand nine hundred and seventeen,

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\*Page-number appearing at foot of page of original certified Transcript of Record.

The Grand Jurors of the United States of America, within and for the Division and District aforesaid, on their oaths, present: THAT

HARRY A. AKERS, LEE YOW, ROLUB W. HENDRICKS PRESELEY A. McFARLAND and THEODORE KAPHAN,

hereinafter called the defendants, heretofore, to wit, during the month of October in the year of our Lord, one thousand nine hundred and sixteen, in the Southern Division of the Northern District of California, and within the jurisdiction of this Honorable Court, did wilfully, knowingly, unlawfully and feloniously conspire, combine, confederate and agree together, with, between, and among themselves and divers other persons whose names are to the Grand Jurors aforesaid, unknown, to commit certain offenses against the United States, that is to say:

They, the said Harry A. Akers, Lee Yow, Rulob W. Hendricks, Preseley A. McFarland, and Theodore Kaphan, did, at the times and places referred to in this indictment, wilfully, knowingly, unlawfully and feloniously conspire, combine, confederate and agree together, with, between, and among themselves and divers other persons, whose names are to the Grand Jurors aforesaid, unknown, to wilfully, knowingly, unlawfully, and feloniously bring into and cause to be brought [2] into, and aid and abet the bringing into and landing in the United States by sea, or otherwise, through the Port at San Francisco, in the Southern Division of the Northern District of California, from the Republic of China, certain Chinese persons, whose names are to the

Grand Jurors aforesaid, unknown, who, as the said defendants herein, then and there, and at all of the times referred to in this indictment, well knew were not then and there, or at any of the times referred to in this indictment, entitled to enter or remain in the United States.

That said conspiracy, combination, confederation and agreement, with, between, and among the said defendants and the said divers other persons, whose names are to the Grand Jurors aforesaid, unknown, was in existence and effect and in process of execution continuously throughout all of the times referred to heretofore or hereinafter in this indictment.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further present that in furtherance of said conspiracy, combination, confederation and agreement, and to effect and accomplish the object thereof, the said defendant, Lee Yow, did, during the month of October in the year of our Lord one thousand nine hundred and sixteen, at San Francisco, in the Southern Division of the Northern District of California, deliver to the said defendant, Harry A. Akers, certain letters addressed to Chinese applicants for admission to the United States of America, awaiting examination to enter the United States of America at the Immigration Station at Angel Island, California, and that said letters contained questions and answers to be used by said applicants as a means of gaining admission to the United States of America.

And to further effect the object of said conspiracy,

[3] combination, confederation and agreement, the said defendant, Harry A. Akers, did, during the month of October, in the year of our Lord one thousand nine hundred and sixteen, within said Division and District, deliver said letters to the said defendant, Rolub W. Hendricks, and upon receipt of said letters from the said defendant, Harry A. Akers, the said defendant, Rolub W. Hendricks, did, during the month of October, in the year of our Lord one thousand nine hundred and sixteen, at the Immigration Station at Angel Island, California, Division and District aforesaid, deliver said letters to certain Chinese applicants for admission to the United States of America.

And to further effect the object of said conspiracy, combination, confederation and agreement, the said defendant, Lee Yow, did, during the month of October, in the year of our Lord, one thousand nine hundred and sixteen, within the Division and District aforesaid, pay to the said defendant, Harry A. Akers, the sum of forty-five dollars (\$45.00), and that thereupon, the said defendant, Harry A. Akers, paid to the said defendant, Rolub W. Hendricks, within said Division and District, the sum of twenty dollars (\$20.00).

And to further effect the object of said conspiracy combination, confederation and agreement, the said defendant, Preseley A. McFarland, did, during the month of October, in the year of our Lord one thousand nine hundred and sixteen, at the Immigration Station at Angel Island, California, Division and District aforesaid, abstract from the files of the

Record Room of the said Immigration Station at Angel Island, California, the official files of certain Chinese persons, to wit: Chin Bow Chee, ex SS. "Siberia," June 29, 1915, Chin Wah Ung, ex SS. "Manchuria," December 4, 1910, and Chin Ping Po, ex SS. "Hong Kong Maru," October 21, 1899, belonging to the Government of the United States of America, and then [4] and there deliver said files to the said defendant, Rolub W. Hendricks, within the said Division and District, at the Immigration Station at Angel Island, California.

And to further effect the object of said conspiracy, combination, confederation and agreement, the said defendant, Rolub W. Hendricks, did, during the month of October, in the year of our Lord one thousand nine hundred and sixteen, in San Francisco, California, Division and District aforesaid, deliver said records belonging to the Government of the United States of America, to the said defendant, Theodore Kaphan.

AGAINST the peace and dignity of the United States of America, and contrary to the statute of the said United States of America, in such case made and provided.

JOHN W. PRESTON,  
United States Attorney.

[Endorsed]: A True Bill. Harry L. Tevis, Foreman, Grand Jury. Presented in open court and filed Oct. 19, 1917. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk [5]



*In the Southern Division of the United States District Court for the Northern District of California, First Division.*

**(Indictment—No. 6273.)**

At a stated term of said court begun and holden at the City and County of San Francisco, within and for the Southern Division of the Northern District of California, on the second Monday of July in the year of our Lord one thousand nine hundred and seventeen,

The Grand Jurors of the United States of America, within and for the Division and District aforesaid, on their oaths, present: THAT

HARRY A. AKERS, LEE YOW, ROLUB W. HENDRICKS, PRESELEY A. McFARLAND and THEODORE KAPHAN,

hereinafter called the defendants, heretofore, to wit, during the month of October in the year of our Lord one thousand nine hundred and sixteen, in the Southern Division of the Northern District of California, and within the jurisdiction of this Honorable Court, did wilfully, knowingly, unlawfully and feloniously conspire, combine, confederate and agree together, with, between, and among themselves and divers other persons, whose names are to the Grand Jurors aforesaid, unknown, to commit certain offenses against the United States, that is to say:

They, the said Harry A. Akers, Lee Yow, Rolub W. Hendricks, Preseley A. McFarland, and Theodore Kaphan, did, at the times and places referred to

in this indictment, wilfully, knowingly, unlawfully and feloniously conspire, combine, confederate and agree together, with, between, and among themselves and divers other persons, whose names are to the Grand Jurors aforesaid, unknown, to wilfully, knowingly, unlawfully, and feloniously conceal, remove, mutilate, obliterate, and destroy, records, papers, and other documents filed and deposited in a public office to wit, the [6] Immigration Office at Angel Island, California.

That said conspiracy, combination, confederation and agreement with, between, and among the said defendants and the said divers other persons, whose names are to the Grand Jurors aforesaid, unknown, was in existence and effect and in process of execution continuously throughout all of the times referred to heretofore or hereinafter in this indictment.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further present that in furtherance of said conspiracy, combination, confederation and agreement, and to effect and accomplish the objects thereof, the said defendant Lee Yow, did, during the month of October in the year of our Lord one thousand nine hundred and sixteen, at San Francisco, California, in the Southern Division of the Northern District of California, deliver to the said defendant Harry A. Akers certain letters addressed to Chinese applicants for admission to the United States of America awaiting examination to enter the United States of America at the Immigration Station, Angel Island, California, and that said letters contained

questions and answers to be used by said applicants as a means of gaining admission to the United States of America.

And to further effect the object of said conspiracy, combination, confederation and agreement, the said defendant, Harry A. Akers, did, during the month of October in the year of our Lord one thousand nine hundred and sixteen, within the said Division and District, deliver said letters to the said defendant, Rolub W. Hendricks, and upon receipt of said letters from the said defendant, Harry A. Akers, the said defendant, Rolub W. Hendricks did, during the month of October in the year of our Lord one thousand nine hundred and sixteen, within said Division and District, at the Immigration Station at Angel Island, California, deliver said letters to certain [7] Chinese applicants for admission to the United States of America.

And to further effect the object of said conspiracy, combination, confederation and agreement, the said defendant, Lee Yow, did, during the month of October in the year of our Lord one thousand nine hundred and sixteen, within said Division and District, pay to the said defendant, Harry A. Akers, the sum of forty-five dollars (\$45.00), and that, thereupon, the said defendant, Harry A. Akers, paid to the said defendant, Rolub W. Hendricks, within said Division and District, the sum of twenty dollars (\$20.00).

And to further effect the object of said conspiracy, combination, confederation and agreement, the said defendant, Preseley A. McFarland, did, during the

month of October in the year of our Lord one thousand filed Oct. 19, 191. W. B. Maling, Clerk. By sand nine hundred and sixteen, within said Division and District, at the United States Immigration Station at Angel Island, California, abstract from the files of the Record Room of the Immigration Station at Angel Island, California, the official files of the Government of the United States of certain Chinese persons, to wit, Chin Bow Chee, ex SS. "Siberia," June 29, 1915, Ching Wah Ung, ex SS. "Manchuria," Dec. 4, 1910, and Chin Ping Po, ex SS. "Hong Kong Maru," Oct. 21, 1899, belonging to the Government of the United States of America, and then and there delivered said files to the said defendant, Rolub W. Hendricks, within the said Division and District, at the Immigration Station at Angel Island, California.

And to further effect the object of said conspiracy, combination, confederation and agreement, the said defendant, Rolub W. Hendricks, did, during the month of October in the year of our Lord one thousand nine hundred and sixteen, in San Francisco, California, within said Division and District, [8] deliver said records belonging to the Government of the United States of America, to the said defendant, Theodore Kaphan.

AGAINST the peace and dignity of the United States of America and contrary to the statute of the said United States of America in such case made and provided.

JOHN W. PRESTON,  
United States Attorney.

[Endorsed]: A True Bill. Harry L. Tevis, Foreman, Grand Jury. Presented in open court and filed Oct. 19, 1917. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [9]

---

*In the Southern Division of the United States District Court for the Northern District of California, First Division.*

No. 6272.

THE UNITED STATES

vs.

HARRY A. AKERS, LEE YOW, ROLUB W. HENDRICKS, PRESELEY A. McFARLAND and THEODORE KAPHAN.

**Demurrer to Indictment on Behalf of Theodore Kaphan.**

Now comes the defendant, Theodore Kaphan, and demurs to the indictment herein and, for ground of demurrer, avers as follows:

I.

That said indictment does not set forth facts sufficient to constitute a public offense against the laws of the United States, or any public offense whatsoever.

II.

That said indictment does not set forth facts sufficient to constitute a violation of Section 37 of the Criminal Code of the United States or of any other

section of said Criminal Code or of any other law of the United States.

### III.

That said indictment does not set forth facts sufficient to constitute any conspiracy to wilfully, knowingly, unlawfully, and feloniously bring into and cause to be brought into, and aid and abet the bringing into and landing in the United States by sea, or otherwise, or at all, through the port of San Francisco, in the Southern Division of the Northern District of California, or through any other port or place, from the Republic of China [10] or from any other place, certain, or any, Chinese persons, who were not entitled to enter or remain in the United States.

### IV.

That said indictment is uncertain in that it cannot be ascertained therefrom how or in what way any of said alleged overt acts committed by any of said defendants were in furtherance of any conspiracy or would effect and accomplish the object thereof.

### V.

That said indictment is unintelligible for the same reasons urged in paragraph IV.

### VI.

That said indictment is ambiguous for the same reasons urged in paragraph IV.

### VII.

That said indictment is uncertain in that it cannot be ascertained therefrom how or in what manner the object of said alleged conspiracy was fur-

thered or effected by alleged fact that one of said defendants, to wit: Rolub W. Hendricks, did during the month of October, 1916, or at any other time, in San Francisco or elsewhere, deliver said or any records belonging to the Government of the United States to the said defendant, Theodore Kaphan.

VIII.

That said indictment is unintelligible for the same reasons urged in paragraph VII.

IX.

That said indictment is ambiguous for the same reasons urged in paragraph VII.

WHEREFORE, said defendant Theodore Kaphan prays the judgment of this Honorable Court that the indictment against [11] him be dismissed and that he be permitted to go hence without day.

MARSHALL B. WOODWORTH.

HARRY K. WOLFF.

Marshall B. Woodworth and Harry K. Wolff hereby certify that said demurrer is not interposed for delay and that they believe that the points at law therein raised are good as matter of law.

MARSHALL B. WOODWORTH.

HARRY K. WOLFF,

Recd. a copy of within demurrer this 27th day of October, 1917.

CASPER A. ORNBAUN,

Asst. U. S. Dist. Atty.

[Endorsed]: Filed Oct. 27, 1917. W. B. Maling, Clerk. Bv C. W. Calbreath, Deputy Clerk. [12]

*In the Southern Division of the United States District Court for the Northern District of California, First Division.*

No. 6273.

THE UNITED STATES

vs.

HARRY A. AKERS, LEE YOW, ROLUB W. HENDRICKS, PRESELEY A. McFARLAND and THEODORE KAPHAN.

**Demurrer to Indictment on Behalf of Theodore Kaphan.**

Now comes the defendant, Theodore Kaphan, and demurs to the indictment herein and, for ground of demurrer, avers as follows:

I.

That said indictment does not set forth facts sufficient to constitute an offense against the laws of the United States.

II.

That said indictment does not set forth facts sufficient to constitute a violation of Section 37 of the Criminal Code of the United States or of any other section of said Criminal Code or of any other law of the United States.

III.

That said indictment does not set forth facts sufficient to constitute any conspiracy to violate any of the provisions of Section 128 of the Criminal Code of the United States or of any other section of said



Criminal Code or of any other law of the United States.

IV.

That said indictment is uncertain in that it cannot be ascertained therefrom how or in what way any of said alleged overt acts committed by any of said defendants were in furtherance [13] of any conspiracy or would effect and accomplish the object thereof.

V.

That said indictment is unintelligible for the same reasons urged in paragraph IV.

VI.

That said indictment is ambiguous for the same reason urged in paragraph IV.

VII.

That said indictment is uncertain in that it cannot be ascertained therefrom:

(a) Whether said immigration office at Angel Island, California, is a public office within the meaning of the law;

(b) Whether said letters, official files referred to in said indictment are public records within the meaning of the law;

(c) Whether said letters and official files were ever filed or deposited in any public office;

(d) What said official files consisted of;

(e) Whether the act of abstracting from the files of the record room of the immigration station at Angel Island, California, certain official files of the Government of the United States of certain Chinese

persons referred to in said indictment constituted any violation of Section 128 of the Criminal Code of the United States or of any other law of the United States.

VIII.

That said indictment is unintelligible for the same reasons urged in paragraph VII.

IX.

That said indictment is ambiguous for the same reasons urged in paragraph VII.

WHEREFORE, said defendant Theodore Kaphan prays the judgment of this Honorable Court that the indictment against [14] him be dismissed and that he be permitted to go hence without day.

MARSHALL B. WOODWORTH.

HARRY K. WOLFF.

Marshall B. Woodworth and Harry K. Wolff hereby certify that said demurrer is not interposed for delay and that they believe that the points at law therein raised are good as matter of law.

MARSHALL B. WOODWORTH.

HARRY K. WOLFF.

Recd. a copy of within demurrer this 27th day of October, 1917.

CASPER A. ORNBAUN,

Asst. U. S. Dist. Atty.

[Endorsed]: Filed Oct. 27, 1917. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [15]

At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Saturday, the 27th day of October, in the year of our Lord one thousand nine hundred and seventeen. Present: The Honorable EDWARD S. FARRINGTON, Judge.

No. 6272.

UNITED STATES OF AMERICA

vs.

HARRY A. AKERS, LEE YOW, ROLUB W. HENDRICKS, PRESELEY A. McFARLAND and THEODORE KAPHAN.

**Minutes of Court—October 27, 1917—Arraignment, Plea and Order Overruling Demurrer.**

This case came on regularly this day for the arraignment of defendant Theodore Kaphan upon the Indictment herein against him. Said defendant was present in court with his attorney, Marshall B. Woodworth, Esq. On motion of C. A. Ornbaun, Esq., Assistant United States Attorney, and on order of Court, said defendant was duly arraigned upon the indictment herein against him and stated his true name to be as contained therein. Thereupon Mr. Woodworth presented and filed a demurrer to the indictment herein on behalf of said defendant, which demurrer the Court ordered and the same is hereby overruled. Defendant was then

called to plead and plead not guilty of the offense charged in said indictment, which plea the Court ordered and the same is hereby entered. [16]

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At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Saturday, the 27th day of October, in the year of our Lord one thousand nine hundred and seventeen. Present: The Honorable EDWARD S. FARRINGTON, Judge.

No. 6273.

UNITED STATES OF AMERICA

vs.

HARRY A. AKERS, LEE YOW, ROLUB W. HENDRICKS, PRESELEY A. McFARLAND and THEODORE KAPHAN.

**Minutes of Court—October 27, 1917—Arraignment, Plea and Order Overruling Demurrer.**

This case came on regularly this day for the arraignment of defendant Theodore Kaphan upon the Indictment herein against him. Said defendant was present in court with his attorney, Marshall B. Woodworth, Esq. On motion of C. A. Ornbaun, Esq., Assistant United States Attorney, and on order of Court, said defendant was duly arraigned upon the indictment herein against him and stated his true name to be as contained therein. Thereupon Mr. Woodworth presented and filed a de-

murrer to the indictment herein on behalf of said defendant, which demurrer the Court ordered and the same is hereby overruled. Defendant was then called to plead and plead not guilty of the offense charged in said indictment, which plea the Court ordered and the same is hereby entered. [17]

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At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Tuesday, the 12th day of November, in the year of our Lord one thousand nine hundred and eighteen. Present: The Honorable M. T. DOOLING, Judge.

No. 6272.

UNITED STATES OF AMERICA

vs.

HARRY A. AKERS et al.

**Minutes of Court—November 12, 1918—Trial.**

This case came on regularly this day for the trial of defendants, Rolub W. Hendricks, Preseley A. McFarland and Theodore Kaphan, and for arraignment of defendant, Harry A. Akers. Each of said defendants was present in court, and defendant, Theodore Kaphan, was present with attorneys, H. K. Wolff, Esq., and H. W. Owens, Esq. Mrs. A. A. Adams, United States Attorney was present for and on behalf of the United States. Marshall B. Wood-

worth, Esq., attorney for defendant, Lee Yow, moved the Court for severance of trial as to said defendant, Lee Yow, and called Dr. G. F. Brackett, who was duly sworn and examined in that behalf. Mrs. Adams called Dr. J. P. Hickey, who was duly sworn and examined on behalf of the United States. After hearing the respective attorneys, the Court ordered that said motion for severance as to said defendant, Lee Yow, be and the same is hereby granted. Defendant, Harry A. Akers, was duly arraigned upon the Indictment herein against him, stated his true name to be as contained therein waived formal reading thereof, and thereupon plead "Guilty" of the offense charged, which plea the Court ordered and the same is hereby entered, and this case continued to November 18, 1918, for pronouncing of judgment upon said defendant, Harry A. Akers. After hearing Mrs. Adams, the Court granted defendants, Rolub W. Hendricks and Preseley A. McFarland, leave to withdraw pleas of [18] "Not Guilty" heretofore entered herein, and accordingly each of said defendants, Rolub Hendricks and Presely A. McFarland, withdrew said pleas, and plead "Guilty" of the charge contained in the indictment herein against them, which pleas the Court ordered and the same are hereby entered, and this case continued to November 18, 1918, for pronouncing of judgment upon said defendants, Rolub Hendricks and Preseley A. McFarland. After hearing the respective attorneys, the Court ordered that the trial of defendant Theodore Kaphan, upon the indictment herein be and the same is hereby consolidated with the case of

the United States of America vs. Harry A. Akers et al., No. 6273. [19]

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At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Tuesday, the 12th day of November, in the year of our Lord one thousand nine hundred and eighteen. Present: The Honorable M. T. DOOLING, Judge.

No. 6273.

UNITED STATES OF AMERICA

vs.

HARRY A. AKERS et al.

**Minutes of Court—November 12, 1918—Trial.**

This case came on regularly this day for the trial of defendants, Rolub W. Hendricks, Preseley A. McFarland and Theodore Kaphan, and for arraignment of defendant, Harry A. Akers. Each of said defendants was present in court, and defendant, Theodore Kaphan, was present with attorneys, H. K. Wolff, Esq., and H. W. Owens, Esq. Mrs. A. A. Adams United States Attorney, was present for and on behalf of the United States. After hearing Mrs. Adams, the Court granted defendants, Rolub Hendricks and Preseley A. McFarland, leave to withdraw pleas of "Not Guilty" heretofore entered, and accordingly said defendants, Rolub Hendricks and Preseley A. McFarland, withdrew said pleas and

plead "Guilty" of the offense charged herein, which pleas the Court ordered and the same are hereby entered, and that this case be continued to November 18, 1918, for pronouncing of judgment upon said defendants, Rolub Hendricks and Preseley A. McFarland. Defendant, Harry A. Akers, was duly arraigned upon the indictment filed herein, stated his true name to be as contained therein, waived formal reading thereof, and thereupon plead "Guilty" of the offense charged therein, which plea the Court ordered and the same is hereby entered, and that this case be continued to November 18, 1918, for pronouncing of judgment upon said defendant, Harry A. Akers. On motion of Marshall B. Woodworth, Esq., attorney for defendant, [20] Lee Yow, and after hearing Mrs. Adams, the Court ordered that a severance of trial of defendant, Lee Yow, be and the same is hereby granted. After hearing the respective attorneys, the Court ordered that the trial of defendant, Theodore Kaphan, proceed and that the jury-box be filled from the regular panel of trial jurors of this court. Accordingly the hereinafter named persons were duly drawn by lot, sworn and examined, etc., as follows: Henry W. Eisert, peremptorily challenged by the United States and excused; William Clack, accepted; J. B. Campbell, peremptorily challenged by defendant and excused; Peter J. Kelly, accepted; Edward H. Kemp, peremptorily challenged by defendant and excused; Geo. T. Kolham, accepted; Wm. J. Barbour, peremptorily challenged by defendant and excused; Richard Jose and Harry S. Scott, peremp-



torily challenged by the United States and excused; Paul Odermatt and A. R. Morrow, accepted; Thos. P. Andrew, peremptorily challenged by the United States and excused; Watson H. Malott, W. A. Frederick, Chas. M. Gunn and Geo. E. Hart, accepted; Richard E. Hartler, peremptorily challenged by the defendant and excused; Ferdinand Toklas, peremptorily challenged by the United States and excused; Wm. B. Goode, accepted; J. A. Ramsey, peremptorily challenged by defendant and excused; R. H. Doane and M. Savannah, accepted. Thereupon twelve (12) persons having been accepted as jurors to try said defendant were accordingly sworn, to wit:

William Clack,	W. A. Frederick,
Peter J. Kelly,	Chas. M. Gunn,
Geo. T. Kilham,	Geo. E. Hart,
Paul Odermatt,	Wm. B. Goode,
A. R. Morrow,	R. H. Doane,
Watson H. Malott,	M. Savannah.

Mrs. Adams made statement to the Court and jury as to the nature of the case and called Robert T. Fergusson, William J. Armstrong and Preseley A. McFarland, each of whom was duly sworn and examined on behalf of the United States. Mrs. Adams presented one package of four records and one package of three records, which were ordered filed and marked United States Exhibits Nos. 1 and 2 [21] respectively for Identification, and an Immigration Record which was introduced in evidence, filed and marked United States Exhibit No. 3. The hour of adjournment having arrived, the Court after ad-

monishing the jurors herein, ordered that the further trial of this case be continued to November 13, 1918, at 10 o'clock A. M., and that all parties be and appear accordingly. [22]

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At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Wednesday, the 13th day of November, in the year of our Lord, one thousand nine hundred and eighteen. Present: The Honorable M. T. DOOLING, Judge.

No. 6273.

UNITED STATES OF AMERICA

vs.

THEODORE KAPHAN et al.

**Minutes of Court—November 13, 1918—Trial  
(Continued).**

This case, consolidated with case of United States of America vs. Theodore Kaphan et al., No. 6272, came on regularly for the further trial thereof. Theodore Kaphan was present in court with attorneys, H. K. Wolff and H. M. Owens, Esqs. Mrs. A. A. Adams, United States Attorney, was present on behalf of the United States. The jury heretofore impaneled and sworn to try said defendant was present and complete. Mrs. Adams called Harry A. Akers, Rolub W. Hendricks and Edward White, who were each duly sworn and examined on behalf

of the United States, and introduced in evidence United States Exhibit No. 2 for Identification, which was marked United States Exhibit No. 4, and rested case of the United States. Mr. Wolff called J. B. Densmore, who was duly sworn and examined on behalf of defendant, and recalled Edward White, who was duly sworn and examined on behalf of defendant, and then called Theodore Kaphan and Mrs. Mary E. Kaphan, each of whom was duly sworn and examined on behalf of defendant, and introduced in evidence certain exhibits which were filed and marked defendant's exhibits "B" (Discharge U. S. A.) and "C" (Note), and rested case of defendant. Mrs. Adams introduced in evidence on behalf of the United States, United States Exhibit No. 1 for Identification as United States Exhibit No. 5, and rested. The case was then argued by Mrs. Adams, Mr. Wolff and Mr. Owens and submitted, whereupon the Court proceeded to instruct the jury herein, who, after being so instructed retired at 5:15 o'clock P. M. to deliberate upon a verdict, and subsequently [23] returned into court at 5:50 o'clock P. M., and upon being called all twelve (12) jurors answered to their names, and in answer to question of Court, stated that they had agreed upon a verdict in each of the above cases, and presented two written verdicts, which the Court ordered filed and recorded, viz: United States of America vs. Theodore Kaphan, No. 6272: "We, the Jury, find Theodore Kaphan, the defendant at the bar Guilty as charged. Geo. T. Kilham, Foreman"; and United States of America vs. Theodore Kaphan, No. 6273: "We, the

Jury, find Theodore Kaphan the defendant at the bar Guilty as charged. Geo. T. Kilham Foreman." Thereupon the Court ordered that the jurors herein be excused from attendance upon the court until November 14, 1918, at 10 o'clock, except jurors, T. H. Doane and M. Savannah and they are excused until November 19, 1918, at 10 o'clock A. M., and juror A. R. Morrow is hereby excused until November 18, 1918, at 10 o'clock A. M. Further ordered that this case be continued to November 16, 1918, for pronouncing of judgment upon said defendant, Theodore Kaphan. [24]

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*In the Southern Division of the United States District Court for the Northern District of California, First Division.*

No. 6272.

UNITED STATES OF AMERICA.

vs.

HARRY A. AKERS et al.

**Verdict.**

We, the jury, find Theodore Kaphan, the defendant at the bar, Guilty as charged.

GEORGE T. KILHAM,

Foreman.

[Endorsed]: Filed Nov. 13, 1918, at 5 o'clock and 50 minutes P. M. W. B. Maling Clerk. By T. L. Baldwin, Deputy Clerk. [25]

*In the Southern Division of the United States District Court for the Northern District of California, First Division.*

No. 6273.

THE UNITED STATES OF AMERICA

vs.

HARRY A. AKERS et al.

**Verdict.**

We, the jury, find Theodore Kaphan, the defendant at the bar, Guilty as charged.

GEORGE T. KILHAM,

Foreman.

[Endorsed]: Filed Nov. 13, 1918, at 5 o'clock and 50 minutes P. M. W. B. Maling, Clerk. By T. L. Baldwin, Deputy Clerk. [26]

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*In the District Court of the United States, in and for the Southern Division of the Northern District of California, First Division.*

THE UNITED STATES OF AMERICA

vs.

HARRY A. AKERS, LEE YOW, ROLUB W. HENDRICKS, PRESELEY A. McFARLAND, and THEODORE KAPHAN.

**Motion for New Trial.**

Now comes the defendants Theodore Kaphan, through his attorneys, and moves the Court for a new

trial and in support thereof, urges the following grounds:

1. That the verdict is against and contrary to the evidence.

2. That the verdict is not supported by the evidence and that the evidence is insufficient to support the verdict.

3. That the verdict is against law.

4. That the Court committed manifest errors during the trial of the case, which were duly and regularly excepted to by the defendant, as follows:

(a) The Court committed manifest errors in admitting evidence against this defendant over the objection and exception, and in refusing to admit evidence over the objection and exception duly and regularly taken;

(b) The Court committed manifest error in its instructions to the jury;

(c) The Court committed manifest error in refusing to instruct the jury as requested by the defendant in his written instructions theretofore submitted to the Court for its consideration;

(d) The Court committed manifest error in modifying certain of the instructions requested by the defendant and in giving said instructions as modified to the jury;

(e) That new evidence has been discovered material to the [27] defendant, which he could not with reasonable diligence, have discovered and produced at the trial.

In support of said motion for a new trial, the defendant hereby refers to and makes a part hereof

all of the records, evidence and proceedings in the above-entitled case, together with the affidavit of Theodore Kaphan filed herewith.

Wherefore, said defendant prays that said motion for a new trial be granted.

HARRY K. WOLFF,  
H. M. OWENS,

Attorneys for Defendant Theodore Kaphan.

Service admitted this — day of January, 1919.

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United States Attorney.

[Endorsed]: Filed Jan. 6, 1919. W. B. Maling,  
Clerk. By C. M. Taylor, Deputy Clerk. [28]

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*In the District Court of the United States, in and for  
the Southern Division of the Northern District  
of California, First Division.*

Nos. 6272-6273.

THE UNITED STATES OF AMERICA,  
Plaintiff,

vs.

HARRY A. AKERS, LEE YOW, ROLUB W.  
HENDRICKS, PRESELEY A. McFAR-  
LAND, and THEODORE KAPHAN,  
Defendants.

**Affidavit of Service on Motion for New Trial.**

State of California,  
City and County of San Francisco,—ss.

H. M. Owens, being duly sworn, says that, on the

6th day of January, 1919, he served upon Annette A. Adams, United States Attorney and attorney for the plaintiff in the above-entitled action, a notice, to wit, a motion for a new trial, a copy of which is hereunto annexed, by delivering such notice to and leaving it with her at her office in the United States Postoffice Building, Seventh and Mission Streets, in the city and county of San Francisco, State of California.

H. M. OWENS.

Subscribed and sworn to before me this 14th day of October, 1919.

[Seal]

LESTER BALL,

Notary Public in and for the City and County of San Francisco, State of California .

[Endorsed]: Filed Oct. 17, 1919. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [29]

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*In the District Court of the United States, in and for the Southern Division of the Northern District of California, First Division.*

THE UNITED STATES OF AMERICA

vs.

HARRY A. AKERS, LEE YOW, ROLUB W. HENDRICKS, PRESELEY A. McFARLAND, and THEODORE KAPHAN,  
Defendants.



**Affidavit of Theodore Kaphan on Motion for New Trial.**

State of California,

City and County of San Francisco,—ss.

Theodore Kaphan, being duly sworn, deposes and says: That he is one of the defendants in the above-entitled action; that subsequent to the trial of defendant, to wit, on the 13th day of November, 1918, I have discovered evidence which will establish the fact that the witness Robert T. Ferguson, testified falsely in answer to questions propounded to him by counsel for this defendant as follows:

“Q. In consideration of your testifying in this case, have you been offered any reward or consideration in the matter of any punishment that might be meted out to you if you were to be found guilty in any of these other case?

“A. *None whatever.*

“Q. Was any suggestion made to you by the District Attorney or anyone from the District Attorney’s office that a plea would be made for you for leniency in the event of your testifying in this case?

“A. *No.*

“Q. Your statement was made to the District Attorney freely and voluntarily?

“A. Yes, it is free and voluntary.” [30]

That at the time when said questions were propounded and the answers thereto made by the said Robert T. Ferguson, one J. B. Densmore was present in the courtroom, sitting at the table with the United States District Attorney, advising with and assisting said United States District Attorney in the trial

of this defendant; that said Densmore testified in this case to the effect, that when he was investigating the cases at the Immigration Station, of which this case was one, that he was doing so as a representative of "The Department of Justice and the Department of Labor."

That at said time when the said Ferguson was testifying and when the said Densmore was present in court and heard the said Ferguson so testify aforesaid, the said Densmore well knew that he had on the 11th day of November, 1917, more than one year prior to said 13th day of November, 1918, promised said Ferguson complete immunity, in words and figures as follows, to wit:

"U. S. Department of Labor,  
Immigration Service.

In answering refer to  
No.

Office of the Commissioner,  
Angel Island Station,  
via Ferry Postoffice,  
San Francisco, Cal.

Nov. 11, 1917.

My dear Mr. Fergusson,

I hope you will pardon me for not answering *you* letter of the third instant before this time, but the unusual press of official business has prevented me doing so.

I am very happy to confirm your belief that I will look out for the interest of your son Robert. I shall ask that he be given complete immunity as a govern-

ment witness. This means, of course, that he will not be required to suffer any punishment imposed by the Court. He has, however, been granted no immunity and must rely on my promise to obtain that clemency to which he will be entitled at the proper time. I want to assure you that I have the utmost confidence in him and I also agree with you that he is honest at heart. If and when this matter is over he will take hold of himself and put this mis-step behind him he will go ahead in a straightforward manner with no fear that he will ever again fall by the wayside.

Sincerely,

J. B. DENSMORE,

Natl. Director of Labor District, Washn., D. C.''

Mr. M. J. Fergusson,

Los Angeles, Cal. [31]

That at the time the said Robert T. Ferguson so testified, he knew that the above and foregoing letter had been sent to his father by the said J. B. Densmore for his benefit and was familiar with the contents thereof.

That the said Densmore never at any time informed the Judge of this court or this affiant that he, the said Densmore, had promised the said Robert T. Ferguson, immunity but sat in this court and permitted this fraud to be practiced on this defendant and on the Court; that the U. S. District Attorney never at any time asked for a severance of the defendants and never at any time informed this defendant or this Court that immunity had been promised the defendant Robert T. Ferguson, but permitted the

said Robert T. Ferguson to testify as he did to the great injury to this defendant.

That this defendant did not know of the existence of said evidence at the time of the trial, and could not by the use of reasonable diligence have discovered and produced the same upon the former trial.

THEODORE KAPHAN.

Subscribed and sworn to before me this 4th day of January, 1919.

[Seal] R. M. BROWN,  
Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Jan. 6, 1919. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [32]

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*In the District Court of the United States, in and for the Southern Division of the Northern District of California, First Division.*

Nos. 6272-6273.

THE UNITED STATES OF AMERICA,  
Plaintiff,

vs.

HARRY A. AKERS, LEE YOW, ROLUB W. HENDRICKS, PRESELEY A. McFARLAND, and THEODORE KAPHAN,  
Defendants.

**Affidavit of Service of Affidavit on Motion for New Trial.**

State of California,  
City and County of San Francisco,—ss.

H. M. Owens, being duly sworn, says that on the 6th day of January, 1919, he served upon Annette A. Adams, United States Attorney and attorney for the plaintiff in the above-entitled action, a notice, to wit, an affidavit on motion for a new trial, a copy of which is hereunto annexed, by delivering such notice to and leaving it with her at her office in the United States Postoffice Building, Seventh and Mission Streets, in the city and county of San Francisco, State of California.

H. M. OWENS.

Subscribed and sworn to before me this 14th day of October, 1919.

[Seal] LESTER BALL,  
Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Oct. 17, 1919. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [33]

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At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Monday, the 6th day of January, in the year of our Lord one thousand nine hundred and nineteen. Present: The Honorable M. T. DOOLING, Judge.

UNITED STATES OF AMERICA

vs.

THEODORE KAPHAN et al.

**Minutes of Court—January 6, 1919—Order Submitting Motion for New Trial.**

This case came on regularly this day for pronouncing of judgment upon defendant, Theodore Kaphan. Mrs. A. A. Adams, United States District Attorney, was present on behalf of the United States. Said defendant and his attorney, H. M. Owens, Esq., were present in court. Counsel for defendant made motion for new trial and after hearing the respective attorneys, the Court ordered said matter submitted.

This case also came on regularly this day for pronouncing of judgment on defendants, P. A. McFarland and R. W. Hendricks. On motion of Mrs. Adams, the Court ordered that said matter be continued to March 6, 1919. [34]

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At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Thursday, the 16th day of January, in the year of our Lord one thousand nine hundred and nineteen. Present: The Honorable M. T. DOOLING, Judge.

No. 6272.

UNITED STATES OF AMERICA

vs.

THEODORE KAPHAN et al.

**Minutes of Court—January 16, 1919—Order Denying Motion for New Trial.**

The Court ordered that the motion of defendant, Theodore Kaphan, for a new trial herein be and the same is hereby denied. After hearing Henry M. Owens, Esq., of counsel for said defendant, the Court further ordered that matter of judgment be continued to February 18, 1919. [35]

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At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Thursday, the 16th day of January, in the year of our Lord one thousand nine hundred and nineteen. Present: The Honorable M. T. DOOLING, Judge.

No. 6273.

UNITED STATES OF AMERICA

vs.

THEODORE KAPHAN et al.

**Minutes of Court—January 16, 1919—Order Denying Motion for New Trial.**

The Court ordered that the motion of defendant,

Theodore Kaphan, for a new trial herein be and the same is hereby denied. After hearing Henry M. Owens, Esq., of counsel for said defendant, the Court further ordered that this case be continued to February 18, 1919, for pronouncing of judgment upon said defendant, Theodore Kaphan. [36]

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*In the District Court of the United States, in and for the Southern Division of the Northern District of California, First Division.*

Indictments Numbers 6272, 6273.

THE UNITED STATES OF AMERICA

vs.

HARRY A. AKERS, LEE YOW, ROLUB W. HENDRICKS, PRESELEY A. McFARLAND and THEODORE KAPHAN.

Defendants.

**Motion in Arrest of Judgment.**

Now comes Theodore Kaphan and hereby moves the above-entitled court for an order in arrest of judgment herein, upon the following grounds, to wit:

1. That said indictment does not set forth facts sufficient to constitute a public offense against the laws of the United States, or any public offense whatsoever.

2. That said indictment does not set forth facts sufficient to constitute a violation of section 37 of the Criminal Code of the United States or of any



other section of said Criminal Code or of any other law of the United States.

3. That said indictment does not set forth facts sufficient to constitute any conspiracy to wilfully, knowingly, unlawfully and feloniously bring into and cause to be brought into, and aid and abet the bringing into and landing in the United States by sea, or otherwise, or at all, through the port of San Francisco, in the Southern Division of the Northern District of California, or through any other port or place, from the Republic of China, or from any other place, certain, or any Chinese persons, who were not entitled to enter or remain in the United States.

4. That said indictment is uncertain in that it cannot be ascertained therefrom how or in what way any of said alleged overt acts committed by any of said defendants were in furtherance of any conspiracy or would effect and accomplish the object thereof.  
[37]

5. That said indictment is unintelligible for the same reasons urged in paragraph 4.

6. That said indictment is ambiguous for the same reasons urged in paragraph 4.

7. That said indictment is uncertain in that it cannot be ascertained therefrom how or in what manner the object of said alleged conspiracy was furthered or effected by the alleged fact that one of said defendants, to wit, Rolub W. Hendricks, did, during the month of October, 1916, or at any other time, in San Francisco, or elsewhere, deliver said or any records belonging to the Government of the

United States to the said defendant, Theodore Kaphan.

8. That said indictment is unintelligible for the same reasons urged in paragraph 7.

9. That said indictment is ambiguous for the same reasons urged in paragraph 7.

10. That the evidence presented in the case does not constitute any violation of section 37 of the Criminal Code of the United States as charged in the indictment.

11. That the evidence presented, even assuming it to be true, and all the prosecution claims for it, does not disclose any violation of section 37 of the Criminal Code of the United States, and that the facts presented in the case do not constitute any violation of section 37 of the Criminal Code of the United States within the time set forth in said indictment.

12. That said indictment in Number 6273 does not set forth facts sufficient to constitute any conspiracy to violate any of the provisions of section 128 of the Criminal Code of the United States or of any other section of said Criminal Code or of any other law of the United States.

13. That said indictment is uncertain in that it cannot be ascertained therefrom how or in what way any of said alleged overt acts committed by any of said defendants were in furtherance of any [38] conspiracy or would effect and accomplish the object thereof.

14. That said indictment is unintelligible for the same reasons urged in paragraph 13.

15. That said indictment is ambiguous for the same reasons urged in paragraph 13.

16. That indictment is uncertain in that it cannot be ascertained therefrom:

A. Whether said Immigration Office, at Angel Island, California, is a public office within the meaning of the law;

B. Whether said letters, official files, referred to in said indictment are public records within the meaning of the law;

C. Whether said letters and official files were ever filed or deposited in any public office;

D. What said official files consisted of;

E. Whether the act of abstracting from the files of the record-room of the Immigration Station at Angel Island, California, certain official files of the Government of the United States of certain Chinese persons referred to in said indictment constituted any violation of section 128 of the Criminal Code of the United States or of any other law of the United States.

17. That said indictment is unintelligible for the same reasons urged in paragraph 16.

18. That said indictment is ambiguous for the same reasons urged in paragraph 16.

19. That the evidence presented in the case does not constitute any violation of section 128 of the Criminal Code of the United States as charged in the indictment.

20. That the evidence presented, even assuming it to be true, and all the prosecution claims for it, does not disclose any violation of section 128 of the

Criminal Code of the United States within the time set forth in said indictment.

21. That the offenses alleged in both of said indictments were [39] distinct and separate from the offenses attempted to be proven at the trial herein; that this defendant has never had any opportunity to plead to any indictment charging him with said offenses attempted to be proven at the trial hereof.

22. That the defendants under indictment who testified against this defendant, were not competent witnesses to testify against this defendant on behalf of the United States in this, that none of said witnesses testified "at his own request," as provided in the Act of March 16, 1878, Chapter 37; 20 Statutes at Large, p. 30.

In support of said motion in arrest of judgment, the defendant hereby refers to and makes a part hereof all of the records, evidence and proceedings in the above-entitled case.

WHEREFORE said defendant, Theodore Kaphan, prays that said motion for an order in arrest of judgment be granted.

HARRY K. WOLFF,  
H. M. OWENS,  
Attorneys for Theodore Kaphan.

Service admitted this — day of January, 1919.

\_\_\_\_\_  
United States Attorney.

[Endorsed]: Filed Feb. 18, 1919. W. B. Maling,  
Clerk. By C. M. Taylor, Deputy Clerk. [40]

*In the District Court of the United States, in and for  
the Southern Division of the Northern District  
of California, First Division.*

Nos. 6272-6273.

UNITED STATES OF AMERICA

Plaintiff,

vs.

HARRY A. AKERS, LEE YOW, ROLUB W.  
HENDRICKS, PRESELEY A. McFAR-  
LAND and THEODORE KAPHAN.

Defendants.

**Affidavit of Service on Motion in Arrest of  
Judgment.**

State of California,  
City and County of San Francisco,—ss.

H. M. Owens, being duly sworn, says that, on the 18th day of February, 1919, he served upon Annette A. Adams, United States Attorney and attorney for the plaintiff in the above-entitled action, a notice, to wit, a motion in arrest of judgment, a copy of which is hereunto annexed, by delivering such notice to and leaving it with her at her office in the United States Postoffice Building, Seventh and Mission Streets, in the city and county of San Francisco, State of California.

H. M. OWENS.

Subscribed and sworn to before me this 14th day of October, 1919.

[Seal]

LESTER BALL,

Notary Public in and for the City and County of  
San Francisco, State of California.

[Endorsed]: Filed Oct. 17, 1919. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [41]

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At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Tuesday, the 18th day of February, in the year of our Lord one thousand nine hundred and nineteen. Present: The Honorable M. T. DOOLING, Judge.

No. 6272.

UNITED STATES OF AMERICA

vs.

THEODORE KAPHAN.

**Minutes of Court—February 18, 1919—Order Denying Motion in Arrest of Judgment.**

In this case defendant, Theodore Kaphan, was present in court with attorney, Henry M. Owens, Esq. Mrs. A. A. Adams, United States District Attorney, was present on behalf of the United States. After hearing the respective attorneys, defendant, Theodore Kaphan, was called for judgment. Mr. Owens then made motion in arrest of judgment, and after hearing the respective attorneys, the Court ordered that said motion be and the same is hereby denied, to which order Mr. Owens entered an exception. No cause appearing why judgment should not be pronounced herein, the Court ordered that said

defendant, Theodore Kaphan, for the offense of which he stands convicted, be imprisoned for the period of Two (2) Years in the United States Penitentiary at McNeil Island, State of Washington, and that defendant stand committed to the custody of the United States Marshal for this District to execute said judgment, and that commitment issue accordingly. On motion of Mr. Owens, the Court further ordered that execution of said judgment be and the same is hereby stayed until March 3, 1919. [42]

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At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Tuesday, the 18th day of February, in the year of our Lord one thousand nine hundred and nineteen. Present: The Honorable M. T. DOOLING, Judge.

No. 6273.

UNITED STATES OF AMERICA

vs.

THEODORE KAPHAN.

**Minutes of Court—February 18, 1919—Order Denying Motion in Arrest of Judgment.**

In this case defendant, Theodore Kaphan, was present in court with attorney, Henry M. Owens, Esq. Mrs. A. A. Adams, United States District Attorney, was present on behalf of the United

States. After hearing the respective attorneys, defendant, Theodore Kaphan, was called for judgment. Mr. Owen then made motion in arrest of judgment, and after hearing the respective attorneys, the Court ordered that said motion be and the same is hereby denied, to which order Mr. Owens entered an exception. No cause appearing why judgment should not be pronounced herein, the Court ordered that said defendant, Theodore Kaphan, for the offense of which he stands convicted, be imprisoned for the period of Two (2) years in the United States Penitentiary at McNeil Island, State of Washington, and that defendant stand committed to the custody of the United States Marshal for this District to execute said judgment, and that commitment issue accordingly. On motion of Mr. Owens, the Court further ordered that execution of said judgment be and the same is hereby stayed until March 3, 1919. Further ordered that said judgment run concurrently with judgment this day entered in the case of the United States of America vs. Theodore Kaphan, No. 6272. [43]



*In the Southern Division of the United States District Court for the Northern District of California, First Division.*

No. 6272.

THE UNITED STATES OF AMERICA

vs.

THEODORE KAPHAN.

**Judgment on Verdict of Guilty.**

Convicted Viol. Sec. 37, Crim. Code.

Mrs. A. A. Adams, United States Attorney, and the defendant with his counsel came into court. The defendant was duly informed by the Court of the nature of the indictment filed on the 19th day of October, 1917, charging him with the crime of Viol. Sec. 37 Crim. Code, U. S.; of his arraignment and plea of Not Guilty; of his trial and the verdict of the jury on the 13th day of November, 1918, to wit: "We, the Jury, find Theodore Kaphan, the defendant at the bar, Guilty as charged. George T. Kilham, Foreman."

The defendant was then asked if he had any legal cause to show why judgment should not be entered herein and no sufficient cause being shown or appearing to the Court, and the Court having denied a motion in arrest of judgment; thereupon the Court rendered its Judgment;

THAT WHEREAS, the said Theodore Kaphan having been duly convicted in this court of the crime of Viol. Sec. 37, Crim. Code, U. S.;

IT IS THEREFORE ORDERED AND ADJUDGED that the said Theodore Kaphan be imprisoned for the term of two (2) years in the United States Penitentiary at McNeil Island, State of Washington.

Judgment entered this 18th day of February, A. D. 1919.

WALTER B. MALING,  
Clerk.

By C. W. Calbreath,  
Deputy Clerk.

[Endorsed]: Entered in Vol. 8, Judg. and Decrees, at page 426. [44]

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*In the Southern Division of the United States District Court for the Northern District of California, First Division.*

No. 6273.

THE UNITED STATES OF AMERICA

vs.

THEODORE KAPHAN.

**Judgment on Verdict of Guilty.**

Convicted Viol. Sec. 37, Crim. Code.

Mrs. A. A. Adams, United States Attorney, and the defendant with his counsel came into court. The defendant was duly informed by the Court of the nature of the indictment filed on the 19th day of October, 1917, charging him with the crime of Viol. Sec. 37, Crim. Code, U. S.; of his arraignment and

plea of Not Guilty; of his trial and the verdict of the jury on the 13th day of November, 1918, to wit: "We, the Jury, find Theodore Kaphan, the defendant at the bar, Guilty as charged. George T. Kilham, Foreman."

The defendant was then asked if he had any legal cause to show why judgment should not be entered herein and no sufficient cause being shown or appearing to the Court, and the Court having denied a motion in arrest of judgment; thereupon the Court rendered its judgment;

THAT WHEREAS, the said Theodore Kaphan having been duly convicted in this court of the crime of Viol. sec. 37, Crim. Code, U. S.;

IT IS THEREFORE ORDERED AND ADJUDGED that the said Theodore Kaphan be imprisoned for the term of two (2) years in the United States Penitentiary at McNeil Island, State of Washington. Further ordered that said term of imprisonment run concurrently with that imposed on defendant in case No. 6272, United States vs. Theodore Kaphan.

Judgment entered this 18th day of February, A. D. 1919.

WALTER B. MALING,

Clerk.

By C. W. Calbreath,

Deputy Clerk.

[Endorsed]: Entered in Vol. 8, Judg. and Decrees, at page 426. [45]

*In the District Court of the United States, in and for  
the Southern Division of the Northern District  
of California, First Division.*

Nos. 6272-6273.

THE UNITED STATES OF AMERICA,  
Plaintiff,  
vs.

HARRY A. AKERS, LEE YOW, ROLUB W.  
HENDRICKS, PRESELEY A. McFAR-  
LAND and THEODORE KAPHAN.  
Defendants.

**Petition for Writ of Error.**

Theodore Kaphan, one of the defendants in the above-entitled cause, feeling himself aggrieved by the judgment of the above-entitled court, entered upon the 18th day of February, 1919, whereby it was adjudged that the defendant Theodore Kaphan be confined in the Federal Penitentiary at McNeil's Island, State of Washington, for the term of two years, the sentence to run concurrently in the above-numbered causes; now comes through his attorneys and petitions said Court for an order allowing him, the said defendant, to prosecute a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit under and according to the laws of the United States in that behalf made and provided; and that all further proceedings in this Court be suspended, stayed and superseded until the determination of said writ of error by the United States Circuit Court of Appeals in and for the Ninth Circuit.

And your petitioner will ever pray, etc.

Dated: March 24, 1919.

H. M. OWENS,  
HARRY K. WOLFF,

Service of within Petition for Writ of Error admitted this 24th day of March, 1919.

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United States Attorney.

[Endorsed]: Filed Mar. 24, 1919. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [46]

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*In the District Court of the United States, in and for  
the Southern Division of the Northern District  
of California, First Division.*

Nos. 6272-6273.

THE UNITED STATES OF AMERICA,  
Plaintiff,

vs.

HARRY A. AKERS, LEE YOW, ROLUB W.  
HENDRICKS, PRESELEY A. McFAR-  
LAND and THEODORE KAPHAN,  
Defendants.

**Affidavit of Service on Petition for Writ of Error.**

State of California,

City and County of San Francisco,—ss.

H. M. Owens, being duly sworn, says that, on the 24th day of March, 1919, he served upon Annette A. Adams, United States Attorney and attorney for the plaintiff in the above-entitled action, a notice, to

wit, a petition for writ of error, a copy of which is hereunto annexed, by delivering such notice to and leaving it with her at her office in the United States Postoffice Building, Seventh and Mission Streets, in the city and county of San Francisco, State of California.

H. M. OWENS.

Subscribed and sworn to before me this 14th day of October, 1919.

[Seal]

LESTER BALL,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Oct. 17, 1919. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [47]

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*In the District Court of the United States, in and for the Southern Division of the Northern District of California, First Division.*

Nos. 6272-6273.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HARRY A. AKERS, LEE YOW, ROLUB W. HENDRICKS, PRESELEY A. McFARLAND and THEODORE KAPHAN,

Defendants.

**Assignment of Errors.**

Now comes the defendant Theodore Kaphan, in the above-entitled cause, by Henry M. Owens, Esq.,

one of his attorneys, and specifies the following as the errors upon which he will rely and which he will urge upon his writ of error in the above-entitled cause, to wit:

1. The Court erred in overruling the demurrer interposed on behalf of said defendant, to which ruling said defendant then and there duly and regularly excepted.

2. The Court erred in denying the motion for a new trial, interposed on behalf of said defendant, to which ruling said defendant then and there duly and regularly excepted.

3. The Court erred in overruling the motion in arrest of judgment interposed on behalf of said defendant, to which ruling the defendant then and there duly and regularly excepted.

WHEREFORE, for the many manifest errors committed by said Court the defendant, Theodore Kaphan, through his attorneys prays that said sentence and judgment of conviction be reversed and for such other and further relief as the Court may think meet and proper.

Dated March 24, 1919.

H. M. OWENS,  
HARRY K. WOLFF,  
Attorneys for Said Defendant.

Service of within assignment of errors admitted this 24th day of March, 1919.

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United States Attorney.

[Endorsed]: Filed Mar. 24, 1919. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [48]

*In the District Court of the United States, in and for  
the Southern Division of the Northern District  
of California, First Division.*

Nos. 6272-6273.

THE UNITED STATES OF AMERICA,  
Plaintiff,

vs.

HARRY A. AKERS, LEE YOW, ROLUB W.  
HENDRICKS, PRESELEY A. McFAR-  
LAND and THEODORE KAPHAN.

Defendants.

**Affidavit of Service on Assignment of Errors.**

State of California,  
City and County of San Francisco,—ss.

H. M. Owens, being duly sworn, says that, on the 24th day of March, 1919, he served upon Annette A. Adams, United States Attorney and attorney for the plaintiff in the above-entitled action, a notice, to wit, an assignment of errors, a copy of which is hereunto annexed, by delivering such notice to and leaving it with her at her office in the United States Post-office Building, Seventh and Mission Streets, in the city and county of San Francisco, State of California.

H. M. OWENS.

Subscribed and sworn to before me this 14th day of October, 1919.

[Seal]

LESTER BALL,  
Notary Public in and for the City and County of  
San Francisco, State of California.



[Endorsed]: Filed Oct. 17, 1919. W. B. Maling,  
Clerk. By C. M. Taylor, Deputy Clerk. [49]

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*In the District Court of the United States, in and for  
the Southern Division of the Northern District  
of California, First Division.*

Nos. 6272-6273.

THE UNITED STATES OF AMERICA,  
Plaintiff,

vs.

THEODORE KAPHAN, LEE YOW, ROLUB W.  
HENDRICKS, HARRY A. AKERS, PRES-  
ELEY A. McFARLAND.

**Order Allowing Writ of Error.**

Upon motion of Henry M. Owens, Esq., one of the attorneys for the defendant, Theodore Kaphan, in the above-entitled cause, and upon filing the petition for a writ of error and assignment of errors herein;

IT IS HEREBY ORDERED that a writ of error be, and it is hereby allowed to have reviewed in the United States Circuit Court of Appeals for the Ninth Circuit, the judgment heretofore rendered herein, and other matters and things in said petition and assignment of error set forth; the defendant Theodore Kaphan is permitted to bail in the sum of \$3,000.00. The bonds for costs upon the writ of error is hereby fixed at \$300.00, and in the meanwhile it is ordered that all further proceedings in this court be suspended, stayed and superseded until the determination of said writ of error by the United

States Circuit Court of Appeals for the Ninth Circuit.

Dated: March 24, 1919.

M. T. DOOLING,  
United States District Judge.

Service of within order allowing writ of error admitted this 24th day of March, 1919.

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United States Attorney.

[Endorsed]: Filed Mar. 24, 1919. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [50]

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*In the District Court of the United States, in and for  
the Southern Division of the Northern District  
of California, First Division.*

Nos. 6272-6273.

THE UNITED STATES OF AMERICA,  
Plaintiff,

vs.

HARRY A. AKERS, LEE YOW, ROLUB W.  
HENDRICKS, PRESELEY A. McFAR-  
LAND and THEODORE KAPHAN,  
Defendants.

**Affidavit of Service of Order Allowing Writ of Error.**

State of California,

City and County of San Francisco,—ss.

H. M. Owens, being duly sworn, says that, on the 24th day of March, 1919, he served upon Annette A. Adams, United States Attorney and attorney for the

plaintiff in the above-entitled action, a notice, to wit, order allowing writ of error, a copy of which is hereunto annexed, by delivering such notice to and leaving it with her at her office in the United States Postoffice Building, Seventh and Mission Streets, in the city and county of San Francisco, State of California.

H. M. OWENS.

Subscribed and sworn to before me this 14th day of October, 1919.

[Seal] LESTER BALL,  
Notary Public in and for the City and County of  
San Francisco, State of California.

[Endorsed]: Filed Oct. 17, 1919. W. B. Maling,  
Clerk. By C. M. Taylor, Deputy Clerk. [51]

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*In the District Court of the United States of America, in and for the Southern Division of the Northern District of California, First Division.*

Nos. 6272-6273.

UNITED STATES OF AMERICA

vs.

THEODORE KAPHAN.

Now comes the defendant Theodore Kaphan, and by leave of Court first had and obtained files and presents for settlement this his Bill of Exceptions as allowed by the Court.

**Bill of Exceptions.**

BE IT REMEMBERED, that heretofore, the Grand Jury of the United States, in and for the

Southern Division of the Northern District of California, did file and turn in, to and before the above-entitled court its indictment above numbered, against the defendants Harry Akers, Lee Yow, Rolub W. Hendricks, Pressley A. McFarland and Theodore Kaphan, and thereafter the said defendants appeared in court, and upon being called to plead to said indictments, each filed a demurrer to said indictments, as shown by the records herein, and the said demurrers being overruled by the Court, the said defendants pleaded not guilty, as shown by the record herein, and the cause being at issue, the same came on for trial on the 12th day of November, 1918, before the Hon. M. T. Dooling, District Judge; that at the calling of the cause, the defendants Harry A. Akers, Rolub W. Hendricks and Pressley A. McFarland withdrew their plea of not guilty in open court and pleaded guilty to the said indictments; that immediately thereafter a jury was duly impaneled to try the defendant, Theodore Kaphan, the United States being represented by Annette A. Adams, United States Attorney, and the defendant, Theodore Kaphan, being represented by Harry K. Wolff, Esq., and Henry M. Owens, Esq., [52] the following proceedings were had:

The two indictments, numbered 6272 and 6273, were consolidated and agreed by the defendant's attorneys and the United States Attorney that the evidence should be applied to both and be tried together and that the evidence shall be considered in both cases.

Tuesday, November 12, 1918.

Counsel appearing:

For the Government: Mrs. ANNETTE A. ADAMS.

For the Defendant: HARRY K. WOLFF, Esq., and HENRY M. OWENS, Esq.,

(The above-entitled cause came regularly on for trial this 12th day of November, 1918, and after a jury had been duly impaneled to try the cause a recess was taken until 2 P. M.)

(The following witnesses were called in behalf of the United States, duly sworn, and testified: Robert T. Ferguson, William J. Armstrong, Pressley A. McFarland, Harry A. Akers, Rolub W. Hendricks, Edward M. White, and J. B. Densmore.

The following witnesses were called in behalf of the defendant, duly sworn, and testified: Theodore Kaphan and Mary E. Kaphan.)

And after the arguments of counsel, and the giving of instructions by the Court, the cause was submitted to the jury.

Thereupon at — P. M., November 13th, 1918, the jury retired to deliberate upon their verdict; and at — P. M. returned into court, and finding the defendant Theodore Kaphan guilty as charged on both of the indictments.

After the jury had returned a verdict, the Court set the 30th day of November, 1918, as the day of sentence, which time for sentence was regularly continued to the 6th day of January, 1919, [53] at which time the defendant interposed a motion for a new trial, and on the 16th day of January, 1919,

said motion for a new trial was denied, to which the defendant excepted, and the Court set the 18th day of February, 1919, as the day of sentence, at which time the defendant interposed a motion in arrest of judgment, the Court overruled said motion and thereupon on the 18th day of February, 1919, the Court rendered judgment sentencing said Theodore Kaphan to serve two years in the Federal Penitentiary at McNeil's Island, State of Washington, on both of said indictments, the sentence to run concurrently, to which order of overruling of the motion in arrest of judgment and sentencing the said defendant to two years at the said Federal Penitentiary, the defendant duly and regularly excepted.

Said defendant, Theodore Kaphan, hereby presents the foregoing as his bill of exceptions herein, and respectfully asks that the same be allowed, signed, sealed, and made a part of the record in this cause.

Dated this 13th day of March, 1919.

HENRY M. OWENS,  
HARRY K. WOLFF,

Attorneys for Defendant, Theodore Kaphan. [54]

*In the District Court of the United States of America, in and for the Southern Division of the Northern District of California, First Division.*

Nos. 6272-6273.

UNITED STATES OF AMERICA

vs.

THEODORE KAPHAN.

**Notice of Presentation of Bill of Exceptions.**

To Mrs. ANNETTE A. ADAMS, United States District Attorney, Northern District of California:

YOUR WILL PLEASE TAKE NOTICE that the foregoing constitutes and is the bill of exceptions as allowed by the Court, in the above-entitled cause, and the defendant, Theodore Kaphan, will apply to the said Court to allow said bill of exceptions, and to sign and seal the same as the bill of exceptions herein.

H. M. OWENS and  
HARRY K. WOLFF,

Attorneys for Defendant Theodore Kaphan.

Receipt of a copy of the foregoing notice of presentation of bill of exceptions is hereby admitted this 29 day of Sept., 1919.

ANNETTE ABBOTT ADAMS,

United States Attorney. [55]

*In the District Court of the United States of America, in and for the Southern Division of the Northern District of California, First Division.*

Nos. 6272-6273.

UNITED STATES OF AMERICA

vs.

THEODORE KAPHAN.

**Stipulation Re Bill of Exceptions.**

IT IS HEREBY STIPULATED AND AGREED that the foregoing bill of exceptions is correct and that the same may be signed, settled, allowed and sealed by the Court.

HENRY M. OWENS and  
HARRY K. WOLFF,

Attorneys for Defendant Theodore Kaphan. [56]

*In the District Court of the United States of America, in and for the Southern Division of the Northern District of California, First Division.*

Nos. 6272-6273.

UNITED STATES OF AMERICA

vs.

THEODORE KAPHAN.

**Order Settling etc. Bill of Exceptions.**

This bill of exceptions is now signed, sealed and made a part of the records in this case, and is allowed as correct.



Dated at San Francisco, California, this 1st day of October, 1919.

M. T. DOOLING,  
Judge of the United States District Court, Northern  
District of California.

Receipt of a copy of the within order of Judge settling bill of exceptions is hereby admitted this 1st day of October, 1919.

ANNETTE ABBOTT ADAMS,  
United States Attorney.

[Endorsed]: Filed Oct. 2, 1919. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [57]

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**Certificate of Clerk U. S. District Court to  
Transcript on Writ of Error.**

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 57 pages, numbered from 1 to 57, inclusive, contain a full, true and correct transcript of certain records and proceedings, in the cases of the United States of America vs. Theodore Kaphan, et al., Nos. 6272 and 6273, as the same now remain on file and of record in this office; said transcript having been prepared pursuant to and in accordance with praecipe for transcript of record (copy of which is embodied in this transcript), and the instructions of the attorneys for the plaintiff in error herein.

I further certify that the cost for preparing and certifying the foregoing transcript on writ of error

is the sum of Nineteen Dollars and Thirty Cents (\$19.30), and that the same has been paid to me by the attorneys for the plaintiff in error herein.

Annexed hereto is the original writ of error (page 59) with the return of said District Court to said writ of error attached thereto (page 60), and the original citation on writ of error (page 61).

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 19th day of November, 1919.

[Seal]

WALTER B. MALING,  
Clerk.

By C. M. Taylor,  
Deputy Clerk. [58]

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**(Writ of Error.)**

UNITED STATES OF AMERICA,—ss.

The President of the United States of America,  
To the Honorable, the Judges of the District  
Court of the United States for the Northern Dis-  
trict of California, GREETING:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you, between Theodore Kaphan, plaintiff in error, and the United States of America, defendant in error, a manifest error hath happened, to the great damage of the said Theodore Kaphan, plaintiff in error, as by his complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice

done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco, in the State of California, within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

WITNESS, the Honorable EDWARD DOUGLAS WHITE, Chief Justice of the United States, the 24th day of March, in the year of our Lord one thousand nine hundred and nineteen.

W. B. MALING,

Clerk of the United States District Court, Northern District of California.

By T. L. Baldwin,  
Deputy Clerk.

Allowed by:

M. T. DOOLING,  
United States District Judge. [59]

[Endorsed]: Nos. 6272-6273. United States District Court for the Northern District of California. Theodore Kaphan, Plaintiff in Error, vs. United States of America, Defendant in Error. Writ of Error. Filed Mar. 24, 1919. W. B. Maling, Clerk. By T. L. Baldwin, Deputy Clerk.



Francisco, in the State of California, within thirty days from the date hereof, pursuant to a writ of error duly issued and now on file in the Clerk's Office of the United States District Court for the Northern District of California wherein Theodore Kaphan is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable M. T. DOOLING, United States District Judge for the Northern District of California, this 24th day of March, A. D. 1919.

M. T. DOOLING,  
United States District Judge. [61]

United States of America,—ss.

On this 24th day of March, in the year of our Lord one thousand nine hundred and nineteen, personally appeared before me, a Deputy Clerk U. S. District Court, Northern District of California, the subscriber, H. M. Owens and makes oath that he delivered a true copy of the within citation to Mrs. Annette A. Adams, United States District Attorney.

H. M. OWENS.

Subscribed and sworn to before me at San Francisco, his 24th day of March, A. D. 1919.

[Seal] T. L. BALDWIN,  
Deputy Clerk U. S. District Court, Northern District  
of California.

**Return to Writ of Error.**

The answer of the Judges of the District Court of the United States, for the Northern District of California, to the within writ of error:

As within we are commanded, we certify under the seal of our said District Court, in a certain schedule to this writ annexed, the record and all proceedings of the plaint whereof mention is within made, with all things touching the same, to the United States Circuit Court of Appeals, for the Ninth Circuit, within mentioned, at the day and place within contained.

We further certify that a copy of this Writ was on the 24th day of March, 1919, duly lodged in the case in this court for the within named defendant in error.

By the Court:

[Seal]

WALTER B. MALING,  
Clerk, U. S. District Court, Northern District of  
California.

By C. M. Taylor,  
Deputy Clerk. [60]

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**(Citation on Writ of Error.)**

UNITED STATES OF AMERICA,—ss.

The President of the United States, to the United States of America, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San

Francisco, in the State of California, within thirty days from the date hereof, pursuant to a writ of error duly issued and now on file in the Clerk's Office of the United States District Court for the Northern District of California wherein Theodore Kaphan is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable M. T. DOOLING, United States District Judge for the Northern District of California, this 24th day of March, A. D. 1919.

M. T. DOOLING,  
United States District Judge. [61]

United States of America,—ss.

On this 24th day of March, in the year of our Lord one thousand nine hundred and nineteen, personally appeared before me, a Deputy Clerk U. S. District Court, Northern District of California, the subscriber, H. M. Owens and makes oath that he delivered a true copy of the within citation to Mrs. Annette A. Adams, United States District Attorney.

H. M. OWENS.

Subscribed and sworn to before me at San Francisco, his 24th day of March, A. D. 1919.

[Seal] T. L. BALDWIN,  
Deputy Clerk U. S. District Court, Northern District  
of California.

[Endorsed]: Nos. 6272-6273. United States District Court for the Northern District of California. Theodore Kaphan, Plaintiff in Error, vs. United States of America, Defendant in Error. Citation on Writ of Error. Filed Mar. 24, 1919. W. B. Maling, Clerk. By T. L. Baldwin, Deputy Clerk

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[Endorsed]: No. 3418. United States Circuit Court of Appeals for the Ninth Circuit. Theodore Kaphan, Plaintiff in Error, vs. The United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the Southern Division of the United States District Court of the Northern District of California, First Division.

Filed November 19, 1919.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.



*In the District Court of the United States, in and for  
the Southern Division of the Northern District  
of California, First Division.*

Nos. 6272-6273.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

HARRY A. AKERS, LEE YOW, ROLUB W.  
HENDRICKS, PRESELEY A. McFAR-  
LAND, and THEODORE KAPHAN.

Defendants.

**Order Extending Time for Clerk to Complete and  
Transmit Transcript.**

Good cause appearing therefor, it is hereby ordered that the return day to the writ of error and citation on the writ of error may be and the same is hereby extended thirty (30) days from October 22, 1919, in order to permit the Clerk of the above-entitled court to complete and transmit the transcript to the United States Circuit Court of Appeals for the Ninth Circuit.

Dated: October 22d, 1919.

WM. W. MORROW,

Judge United States Circuit Court of Appeals, Ninth  
Judicial Circuit.

[Endorsed]: Nos. 6272-6273. In the District Court of the United States, in and for the Southern Division of the Northern District of California, First Division. The United States of America, Plaintiff, vs. Harry A. Akers, Lee Yow, Rolub W. Hendricks,

Preseley A. McFarland, and Theodore Kaphan, Defendants. Order Extending Time for Clerk to Complete and Transmit Transcript. Filed Oct. 22, 1919. F. D. Monckton, Clerk.

No. 3418. United States Circuit Court of Appeals for the Ninth Circuit. Refiled Nov. 19, 1919. F. D. Monckton, Clerk.